

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:14 -CV- 133 -FL

FILED

MAR 07 2014

JULIE A. RICHARDS, CLERK
US DISTRICT COURT, EDNC
BY [Signature] DEP CLK

Timothy P. Danehy

Plaintiff,

v.

TIME WARNER CABLE

ENTERPRISE LLC.

Defendant.

COMPLAINT

Trial by Jury Demanded

1. Plaintiff Timothy P. Danehy hereby sues Defendant TIME WARNER CABLE ENTERPRISE LLC. and alleges:

PARTIES

2. The plaintiff in this suit is Timothy P. Danehy, (hereinafter "Plaintiff"), a natural person, who resides in Vance County, North Carolina.

3. Defendant TIME WARNER CABLE ENTERPRISE LLC. (hereinafter "TWC") a corporation with offices at 316 E. Morehead St. Charlotte, NC 28202 doing business in the state of North Carolina.

STANDING and CAPACITY

4. "Plaintiff", as an individual with the legal capacity to sue, has standing because his right to privacy and other rights were violated.

JURISDICTION

5. This court has jurisdiction under 47 U.S.C. § 227(b)(3), 47 U.S.C. § 227(c)(5) and 28 U.S.C. § 1331.

VENUE

6. The occurrences which give rise to this action occurred in Vance County, North Carolina and the Plaintiff resides in Vance County, North Carolina.

STATEMENT OF CLAIM

7. This is an action and claim for damages to remedy the breach of the "Plaintiff's" right to privacy that resulted from calls "TWC" made to "Plaintiff" in violation of the Telephone Consumer Protection Act (TCPA) 47 U.S.C. § 227 *et seq.* as further set forth below.

GENERAL ALLEGATIONS

8. On information and belief, "Plaintiff" alleges that he received a total of six calls from "TWC"'s automatic telephone dialing capable system on November 25th and

26th 2013, see attached exhibit "A". "TWC" left prerecorded messages on "Plaintiff's" cell phone in violation of 47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii).

9. On information and belief, "Plaintiff" further alleges that "TWC" made the six solicitation calls from phone number 877-566-4892 to "Plaintiffs" nationwide do-not-call registered phone number 704-421-6235 in violation of 47 U.S.C. § 227(c) (5).

10. The three calls on the evening of the 25th could have cost the "Plaintiff" his job because the "Plaintiff's" employer does not allow talking on a cell phone while driving or performing critical tasks.

11. The three calls in the morning of the 26th interrupted the "Plaintiffs" sleep. The "Plaintiff" is a professional driver employed in the transportation of Hazardous-Materials and needs proper restful sleep to be safe while working.

12. On information and belief, "Plaintiff" also alleges the "TWC" calls were not placed in relation to any emergency, the calls were not placed in relation to any business relationship "Plaintiff" had with "TWC" and "Plaintiff" never gave "TWC" express consent to call cell number 704-421-6235.

COUNT I

**ACTION FOR VIOLATION OF THE TELEPHONE CONSUMER
PROTECTION ACT 47 U.S.C. § 227 *et seq.*, By DEFENDANT TIME WARNER
CABLE ENTERPRISE LLC.**

13. "Plaintiff" repeats and re-alleges paragraphs 1 through 12 above as if fully stated and set forth herein.

14. This is an action for the willful or knowing violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*

15. As stated above "TWC"'s placing of six calls on November the 25th and 26th from phone number 877-566-4892 to "plaintiff"'s consumer cell phone number 704-421-6235 using an automatic telephone dialing capable system as defined by 47 U.S.C. § 227(a)(1)(a)(b) and leaving prerecorded messages without "Plaintiff's" expressed consent was a violation of 47 U.S.C. § 227(b)(1)(a)(iii).

16. The TCPA provides a private right of action as stated in 47 U.S.C. § 227(b)(3)

A person or entity may, if otherwise permitted by the laws of court of a State, bring in an appropriate court of that State-

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to

receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the court finds that the defendant **willfully or knowingly** violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

WHEREFOR, Plaintiff demands judgment for damages against Defendant, TIME WARNER CABLE ENTERPRISE LLC., pursuant to 47 U.S.C. § 227(b)(3)(A)(B)(C) in the amount of \$500.00 for the first call and \$1,500.00 per call for each and every successive call thereafter as knowing and willful violations of the TCPA. Plaintiff also requests post judgment interest, all costs to bring this action and any other relief the court deems just and right.

COUNT II

ACTION FOR VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. § 227 (c)(5), By DEFENDANT TIME WARNER CABLE ENTERPRISE LLC.

17. "Plaintiff" repeats and re-alleges paragraphs 1 through 12 above as if fully stated and set forth herein.

18. This is an action for the willful or knowing violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227(c)(5).

19. As stated above "TWC"'s placing of six calls on November the 25th and 26th from phone number 877-566-4892 to "plaintiff"'s National Do-Not-Call registered consumer cell phone number 704-421-6235 was a violation of 47 U.S.C. § 227(c)(5).

20. The TCPA provides a private right of action as stated in 47 U.S.C. § 227(c)(5)

A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State-

(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater,

or

(C) both such actions.

It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under this subsection. If the court finds that the

defendant **willfully or knowingly** violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

WHEREFOR, Plaintiff demands judgment for damages against Defendant, TIME WARNER CABLE ENTERPRISE LLC., pursuant to 47 U.S.C. § 227(c)(5)(A) (B)(C) in the amount of \$500.00 for the first call and \$1,500.00 per call for each and every successive call thereafter as knowing and willful violations of the TCPA. Plaintiff also requests post judgment interest, all costs to bring this action and any other relief the court deems just and right.

CONDITIONS PRECEDENT


21. All conditions precedent to the brining of this action have been met.

JURY DEMAND

22. Plaintiff hereby demands a trial by jury of all issues so triable as a matter of law.

Dated: March 7th 2014

Respectfully Submitted,



Timothy P. Danehy

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